

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Aquila, Inc., d/b/a     ) Application No. NG-0031  
Aquila Networks (Aquila), Omaha,         )  
seeking authority for Limited Cost         ) ORDER DENYING APPLICATION  
Recovery in the State of Nebraska.         )  
  ) Entered: November 1, 2005

BY THE COMMISSION:

On August 1, 2005, Aquila, Inc., d/b/a Aquila Networks (Aquila), filed an application seeking authority for "Limited Cost Recovery" in the State of Nebraska. Notice of the application was published in the *Daily Record*, Omaha, on August 2, 2005. The Commission granted Petitions for Formal Intervention filed by Cornerstone Energy and the Public Advocate on September 7, 2005.

The proceedings regarding this application were bifurcated into two phases. During the first phase, the parties and the Commission would address the threshold questions of whether Aquila's application is permissible under existing statutes and consistent with public policy considerations. Phase two would address the merits of the application.

Aquila and the Public Advocate each submitted briefs on the threshold questions presented in the first phase. Oral argument was held on October 19, 2005.

Aquila proposes "limited cost recovery" of \$1,057,936 in annual revenues resulting in an increase in the customer charge of approximately \$.50 per customer per month. In an effort to demonstrate that the proposed increase is reasonable, Aquila relies upon various indices, including: historical average annual rate increases since 1991; a standard increase utilized by the telecommunications industry of 1 percent of regulated revenues; 2004 costs based upon the outcome of Aquila's 2003 rate case; and increases in the Consumer Price Index during the previous three years.

Aquila expressly states in its application that it is not initiating a General Rate Filing pursuant to *Neb. Rev. Stat. § 66-1838* (2004 Cum. Supp.). Instead, it contends that the Commission's plenary powers to regulate natural gas allow it to establish an alternate, more efficient procedure by which a jurisdictional utility can seek smaller increases more frequently. Aquila's application contemplates abbreviated discovery and completion of the entire application and approval process within 180 days.

In sum, Aquila asserts that its proposal is in the public interest as it will lead to greater efficiency in the rate-making process; lower regulatory and litigation costs; and provide for smaller, more frequent increases to customers.

The Public Advocate contends that Aquila's application is contrary to public policy and is not permissible under existing statutes.

#### O P I N I O N   A N D   F I N D I N G S

Pursuant to the State Natural Gas Regulation Act, *Neb. Rev. Stat. § 66-1804(a)* (2004 Cum. Supp.), the Commission has "full power, authority and jurisdiction to regulate natural gas public utilities and may do all things necessary and convenient for the exercise of such power, authority, and jurisdiction." The Legislature expressly intended that the powers granted to the Commission by the Act be "liberally construed."<sup>1</sup>

As a result of the plenary power conveyed by this section, the Commission possesses great flexibility in establishing procedures to carry out its statutory obligations, one of which is the regulation of rates charged by jurisdictional utilities. In addition, § 66-1808 sets forth procedures for rate changes that are not general rate filings. Thus, the State Natural Gas Regulation Act provides the Commission with the jurisdiction to consider alternate mechanisms for processing rate changes that do not rise to the level of a general rate filing.

A "rate" is "every compensation, charge, fare, toll, tariff, rental, and classification, or any of them, demanded, observed, charged, or collected by any jurisdictional utility for any service." § 66-1802(12). A "general rate filing" is "any filing which requests changes in overall revenue requirements for a jurisdictional utility." *Neb. Rev. Stat. § 66-1802(6)* (2004 Cum. Supp.). Specific procedures are set forth in § 66-1838 to handle general rate filings.

We recognize that any change in rates will necessarily affect revenues. However, § 66-1808 clearly anticipates changes to rates are possible outside of a general rate filing.

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<sup>1</sup> "The State Natural Gas Regulation Act and all grants of power, authority, and jurisdiction in the act made to the commission shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon the commission." *Neb. Rev. Stat. §66-1804(b)*.

Aquila's proposal specifically seeks an overall increase to its revenue. As such, it fits squarely within the definition of a "general rate filing" and must be handled through the procedures set forth in § 66-1838. Aquila's application is, therefore, denied.

Jurisdictional utilities are encouraged to continue to present rate proposals that minimize regulatory costs and increase efficiency. Such proposals must fit within the parameters of § 66-1808. The Commission is open to considering such requests.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Aquila's application for Limited Cost Recovery is denied.

MADE AND ENTERED at Lincoln, Nebraska, this 1st day of November, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director